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No. 04-634

IN THE
Supreme Court of the United States
OCTOBER TERM, 2004

PEABODY COAL COMPANY,
PEABODY WESTERN COAL COMPANY, and
PEABODY HOLDING COMPANY, INC.,
Petitioners,

v.

THE NAVAJO NATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE NAVAJO NATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether federal-question subject-matter jurisdiction exists over a suit brought by a non-Indian corporation against the Navajo Nation to enforce an arbitration award specifying royalty rates under a mineral lease where the alleged basis for such jurisdiction is that in unrelated litigation, the Nation has challenged the validity of the mineral lease.

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STATEMENT OF THE CASE

Petitioners Peabody Coal Company, Peabody Western Coal Company, and Peabody Holding Company, Inc. ("Peabody") filed a "Complaint for Enforcement of Arbitration Award or in the Alternative to Compel Arbitration" in the United States District Court for the District of Arizona. [ER 10][1] The background surrounding the complaint is fully described in the decisions of the Court of Appeals [Pet. App. 1a-14a] and the District Court [Pet. App. 15a-26a]. This Statement highlights aspects of the case's background that are most relevant to the Petition.

1. The Arbitration

The arbitration award at issue in Peabody's complaint concerns certain mineral leases executed in the 1960s and amended in 1987 that give Peabody the right to mine coal on Navajo lands in exchange for a specified royalty fee that Peabody pays to the Nation. Pursuant to the Indian Mineral Leasing Act of 1938, 25 U.S.C. §§ 396a-396g ("IMLA"), the leases and lease amendments were approved by the Secretary of Interior ("Secretary"). [Pet. App. 2a-4a]

Under the 1987 lease amendments, the parties agreed to arbitration for the determination or adjustment of future royalty rates for successive ten-year periods beginning in 1997. [SER 5-6 (1987 lease amendments, Article IV(b))] In the event of such an arbitration, the lease amendments provided that the arbitrators would determine "'an equitable royalty rate.'". [ER 16 (Compl. ¶ 20)] In the late 1990s, the parties attempted to renegotiate the royalty rates. When negotiations failed, in 1998, the Navajo Nation initiated arbitration,

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[1] Citations to "ER" and to "SER" refer to Appellants' Excerpts of Record and Appellee's Supplemental Excerpts of Record, respectively, filed in the Ninth Circuit below.

"invok[ing] the arbitration procedures set forth" in the 1987 lease amendments. [SER 114]

In demanding arbitration, the Navajo Nation did not seek to "repudiate" [Pet. at 3] any provision of the applicable mineral leases or lease amendments. To the contrary, the Nation expressly sought to employ those provisions. As Peabody acknowledged below, "[i]n these 1998 arbitration proceedings, the Navajo Nation ***invoked and relied upon*** the 'equitable royalty rate' provisions of the 1987 Lease Amendments, and asked the panel to determine what was an 'equitable royalty rate.'" [ER 19 (Compl. ¶ 35) (emphasis added); *accord* ER 66-68 (Navajo Nation's Prehearing Arbitration Brief)] Likewise, the parties' joint Arbitration Agreement, setting forth the procedures applicable to the arbitration, reaffirmed that the parties were not questioning the validity of the leases. According to the Arbitration Agreement, "[t]he power and jurisdiction of the arbitrators shall be limited to determining the change, if any, in the royalty rates and the royalty/tax caps applicable under the Leases, ***within the limits and in accordance with the standards set forth in the Leases***." [SER 29 (emphasis added)]

Although an arbitration panel was convened, the parties reached a negotiated settlement [ER 69-71], which was memorialized in a stipulated final arbitration award [ER 72-73]. The arbitration award specified royalty rates for the leases. Importantly, nothing in the award required approval of the Secretary or any other federal official. The parties agreed that "no action of the . . . Secretary is necessary to give full and final effect to the arbitration award." [ER 69]

The settlement agreement also provided that the parties would execute a lease amendment, subject to the Secretary's approval, calling for certain payments to be made by Peabody to the Navajo Nation. Although this lease amendment ultimately was approved by the Secretary [ER 74-76], the settlement agreement stated

that the arbitration award would remain in tact even had the Secretary not approved the amendment. [ER 69-70 ("The entry of the final arbitration award shall not be contingent upon or otherwise dependent upon the approval by . . . the Secretary of the Lease Amendment Agreement.")] The arbitration award itself did not even mention the lease amendment. Peabody is thus flat wrong in stating (at 17) that the "arbitral award would become void if the Secretary did not approve the 1998 Lease Amendments."

2. Peabody's Federal Court Complaint

Contrary to the Petition (at 14), Peabody's complaint does ***not*** seek "a declaratory judgment that the 1998 Arbitration Settlement Agreement, the Stipulated Arbitration Award, and the 1998 Lease Amendments were valid and binding on the Navajo Nation." The complaint does not seek declaratory relief at all, nor does it question the validity of those documents.

The only place the complaint even mentions issues of validity is in its description of an unrelated lawsuit brought by the Navajo Nation in the United States District Court for the District of Columbia. In that other lawsuit, as the complaint notes, the Navajo Nation has contended that the 1987 mineral lease amendments are invalid because of various acts of wrongdoing by Peabody. [ER 23-27][2] But ***Peabody's*** complaint does not ask for an adjudication of the validity of those amendments. Rather, Peabody's complaint only asks for "enforcement of [the] final arbitration award," or, alternatively, "an order compelling the Navajo Nation to arbitrate matters now in

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[2] The Navajo Nation also filed an unrelated action against Peabody in the District of Arizona contending that "the coal mining leases are invalid because the Nation must share a portion of its proceeds with the Hopi Tribe." [Pet. App. 12a n.4]

litigation in the United States District Court for the District of Columbia." [ER 10, ¶ 1][3]

In requesting that specific relief, Peabody "has not alleged that either party is failing to comply with the award." [Pet. App. 13a] As Peabody conceded in the Court of Appeals, "coal is being mined and sold," and "Peabody is paying royalties to the Navajo Nation at the rates found in the arbitration award." [*Id.*]

3. The Decisions Below

On motion filed by the Navajo Nation, the District Court dismissed Peabody's complaint for lack of subject matter jurisdiction. The District Court reasoned that Peabody's complaint "centers on" the final arbitration award and its construction, "not the underlying federal statute" under which the mineral leases were approved. [Pet. App. 24a] In particular, the court observed that "Peabody appears not to have brought into question or raised any issue relating to the approval provisions of the IMLA in its complaint." [*Id.*] Moreover, the court rejected Peabody's apparent attempt to predicate federal jurisdiction on the Navajo Nation's "anticipat[ed]" defense that the arbitration agreement and the 1987 lease amendments on which that agreement was based "are invalid under the IMLA." [*Id.*] "The possibility of a defense based on federal law, or allegations anticipating such a defense, do not satisfy the jurisdictional requirement of [28 U.S.C.] § 1331." [Pet. App. 21a (citing this Court's authority)]

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[3] In the District of Columbia litigation, Peabody has asserted the final arbitration award as a defense to the Navajo Nation's claims in that case. [SER 70 (Am. Answer & Conditional Countercl., Nineteenth Affirmative Defense)] The availability of that defense refutes Peabody's argument here (at 24) that, absent reversal of the Ninth Circuit decision below, it has no forum to vindicate its rights under the arbitration award.

The Ninth Circuit affirmed. The Court of Appeals' analysis began by noting that Peabody had not alleged a cause of action created by federal law. [Pet. App. 7a] Accordingly, Peabody could invoke federal jurisdiction only if its "'right to relief necessarily depends on resolution of a substantial question of federal law.'" [Pet. App. 8a (quoting this Court's authority)] Peabody could have made that showing, the court ruled, had the Navajo Nation "attempted to exceed its authority by regulating any aspect of Peabody's commercial enterprise under tribal law." [Pet. App. 12a] Likewise, federal jurisdiction would exist if the "validity of mineral leases" were in issue. [Pet. App. 10a] The court concluded, however, that neither ground for federal jurisdiction existed here. [Pet. App. 11a-12a]

In so ruling, the court recognized that in Peabody's ***appellate*** briefing, it attempted to characterize the federal question in its complaint as "'the enforceability of commercial Indian mineral leases the Interior Secretary approved under federal law.'" [Pet. App. 8a] Were the validity of the underlying leases really raised by the complaint, the court held that jurisdiction would exist. [Pet. App. 10a] But in fact, the court found, "Peabody's actual complaint seeks enforcement of the final arbitration award, not the underlying leases or lease amendments." [Pet. App. 8a] Moreover, "the final arbitration award for which Peabody seeks enforcement was ***not*** federally approved." [Pet. App. 10a] Given these circumstances, the court held, "Peabody's complaint does not present a federal question." [Pet. App. 13a]

The Court of Appeals denied rehearing by the panel and rehearing en banc. [Pet. App. 28a]

REASONS FOR DENYING THE WRIT

The Petition does not present any reason—let alone a "compelling" one [Sup. Ct. R. 10]—justifying a grant of certiorari in this case. Peabody first contends that

reversal is mandated by this Court's decision in *United States v. Navajo Nation*, 537 U.S. 488 (2003). But that case concerned the requirements for imposing damages against the United States for breach of trust toward an Indian tribe. That issue has nothing to do with this case, which does not concern the United States at all, but only concerns a claim by a private corporation for enforcement of an arbitration award to which the United States is not a party.

Second, Peabody seeks reversal because the Ninth Circuit supposedly ignored that federal jurisdiction exists when a complaint seeks to adjudicate the validity of a mineral lease approved by the Secretary. But the Court of Appeals expressly held that subject matter jurisdiction exists when a well-pleaded complaint seeks to adjudicate the validity of a federally-approved mineral lease. Peabody did not come within that rule, the court found, because its complaint does not raise any issue regarding the validity of its lease with the Navajo Nation. That finding was correct and, in any event, does not present the sort of "compelling" issue meriting this Court's review.

I. *UNITED STATES V. NAVAJO NATION*, LIKE THE OTHER UNRELATED LITIGATION BROUGHT BY THE NAVAJO NATION, IS IRRELEVANT TO THE QUESTIONS RAISED OR THE EXISTENCE OF FEDERAL JURISDICTION IN THIS CASE.

Peabody's Petition proclaims (at 2) that "[t]his case is a continuation of a dispute previously before this Court in *United States v. Navajo Nation*, 537 U.S. 488 (2003)." Peabody even argues (at 25) that "summary reversal" is warranted on the basis of *Navajo Nation*. But *Navajo Nation* has nothing to do with the issues raised in Peabody's complaint in this case.

Navajo Nation involved the Tribe's damages claim against the United States, which alleged that the Secretary's approval of the 1987 lease amendments

between the Navajo Nation and Peabody constituted a breach of trust. This Court rejected the claim, concluding that the Nation's allegations against the Secretary did "not derive from any liability-imposing provision of the IMLA or its implementing regulations." 537 U.S. at 493.

That holding is inapposite to Peabody's complaint here. This complaint does not concern any claims against, or any decision by, the Secretary. Rather, this complaint merely involves Peabody's claim against the Navajo Nation for enforcement of an arbitration award that did not require, and did not receive, Secretarial approval, and to which the Secretary was not a party. As the District Court found, Peabody simply has not "brought into question or raised any issue relating to the approval provisions of the IMLA in its Complaint." [Pet. App. 24a][4]

Peabody nonetheless argues (at 25) that reversal is warranted because, in ***other*** unrelated litigation in the District of Columbia and the District of Arizona, the Navajo Nation has sought to "repudiate the validity of the 1987 Lease Amendments" based on arguments "rejected by this Court in *Navajo Nation*." As an initial matter, both of those unrelated cases concern the Navajo Nation's claims for relief against ***Peabody***. Neither case involves a claim for relief against the United States and thus neither case implicates the issues of the United States' liability that were decided in *Navajo Nation*.

More fundamentally, that the ***Navajo Nation*** has questioned the validity of the 1987 lease amendments in ***other*** cases is no basis for subject matter jurisdiction over ***Peabody's*** complaint in ***this*** case. Under the "'well-

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[4] The parties' mineral lease was partially amended as a result of their settlement agreement, and the amendment was approved by the Secretary. But the arbitration award that Peabody here seeks to enforce does not involve the lease amendment, and Peabody's complaint does not seek to adjudicate the validity of that amendment. [*See supra* pp. 2-4]

pleaded complaint rule,'" "federal jurisdiction exists only when a federal question is presented on the face of the ***plaintiff's*** [i.e., Peabody's] properly pleaded complaint"—not on the face of a complaint filed by someone else in another case. *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (emphasis added). Likewise, under the well-pleaded complaint rule, the possibility that the Navajo Nation, as a defense to Peabody's complaint, might have asserted arguments as to the invalidity of the lease amendments is insufficient to create federal jurisdiction. *Id.* at 393 (federal jurisdiction cannot be grounded on an "anticipated" defense "even if both parties concede that the federal defense is the only question truly at issue").

In short, Peabody's ticket to federal jurisdiction depends entirely on the face of its complaint, which as explained in the next section, does not present any federal question.

II. THE COURT OF APPEALS CORRECTLY HELD THAT PEABODY'S COMPLAINT DOES NOT RAISE ANY QUESTION OF FEDERAL LAW BECAUSE IT DOES NOT QUESTION THE VALIDITY OF ANY MINERAL LEASE OR CONTRACT APPROVED BY THE SECRETARY, BUT MERELY SEEKS ENFORCEMENT OF AN ARBITRATION AWARD TO WHICH THE SECRETARY IS NOT A PARTY.

Peabody's Petition does not claim federal jurisdiction merely because an Indian tribe is a party or because this case concerns a contract with an Indian tribe. Federal courts are unanimous that those circumstances are not enough to create "arising under" jurisdiction, and Peabody does not argue to the contrary. *See Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989) (no subject matter jurisdiction over case brought to compel an Indian tribe to arbitrate a contractual dispute); *TTEA v. Ysleta del Sur Pueblo*, 181 F.3d 676, 681 (5th Cir. 1999) ("The federal courts do not have jurisdiction to entertain routine contract actions involving Indian tribes."); *Tamiami*

Partners, Ltd. v. Miccosukee Tribe of Indians, 999 F.2d 503, 507-08 (11th Cir. 1993) (similar); *Mescalero Apache Tribe v. Martinez*, 519 F.2d 479, 481-82 (10th Cir. 1975) (similar).

Indeed this Court held long ago that a complaint did not come within federal subject matter jurisdiction merely because it was brought by a party seeking to enforce rights to a Secretarial-approved mineral lease involving Indian property. *Shulthis v. McDougal*, 225 U.S. 561, 569-70 (1912). Rather, for such a complaint to be deemed to "arise under" federal law, the Court held, the complaint must "substantially involve[] a dispute or controversy respecting the validity, construction, or effect of such a [federal] law, upon the determination of which the result depends." *Id.* at 569.[5]

Seeking to invoke this precedent, Peabody argues that federal jurisdiction exists here because its complaint supposedly implicates the validity of the 1987 mineral lease amendments. In Peabody's view, the Ninth Circuit should be reversed because it failed to recognize that actions implicating the validity of such federally-approved leases arise under federal law. Peabody's argument, however, misstates both its complaint and the decision of the Court of Appeals, all in an effort to suggest an inter-circuit conflict that does not exist.

A. Peabody Mischaracterizes Its Complaint And The Court Of Appeals' Holding.

Whatever may be at issue in other, unrelated litigation, Peabody's complaint in ***this*** action does ***not*** "center[] on the validity of the federal approval of the 1987 Lease Amendments." [Pet. at 18] Indeed, Peabody's

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[5] *Norton v. Larney*, 266 U.S. 511 (1925), applied the same rule of law and found subject matter jurisdiction in a suit over title to Indian land because it depended upon resolution of conflicting constructions of the relevant federal statute.

complaint does not put the validity of those amendments into question at all. Rather, as the Ninth Circuit found, Peabody's complaint simply "seeks enforcement of the final arbitration award." [Pet. App. 8a][6] The District Court agreed. [Pet. App. 24a]

Having mischaracterized its complaint as implicating the validity of the 1987 lease amendments, Peabody then criticizes the Ninth Circuit for "cast[ing] into doubt the ability of private parties to avail themselves of federal court jurisdiction to establish the validity of any such leases or contracts." [Pet. at 25] The Ninth Circuit cast no such doubt. To the contrary, the court expressly recognized that federal jurisdiction exists in cases involving "the validity of mineral leases." [Pet. App. 10a] The court merely and correctly found that this is not such a case:

> Peabody's claim here does not allege any problems with the underlying leases or their amendments. The only contract at issue in Peabody's claim is the arbitration settlement agreement, which is not a specialized type of contract that is subject to extensive federal regulation.
>
> . . . Peabody does not contest the validity of the coal mining leases or their amendments, nor does it allege that the Navajo Nation has breached a lease or lease amendment. . . . In cases where a Native

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[6] Nor did either party in the underlying arbitration proceeding question the validity of the lease amendments. As Peabody admits, in instituting the arbitration, the Navajo Nation "invoked and relied upon the 'equitable royalty rate' provisions of the 1987 Lease Amendments." [ER 19 (Compl. ¶ 35)] And the parties' joint Arbitration Agreement required the arbitrators to act "within the limits and in accordance with the standards set forth in the Leases." [SER 29]

> sovereign has not tried to assert authority over a non-Native party, and where the validity of a federally-regulated contract is not at issue, courts have not found a substantial federal question to be present.

[Pet. App. 11a-12a (footnote omitted)]

In the end, therefore, the Ninth Circuit actually embraced the very rule of law advocated by Peabody—that federal court jurisdiction exists in cases questioning the validity of federally-approved leases. Although Peabody protests the Ninth Circuit's application of that rule to the specifics of its complaint, its protest is factually wrong—its complaint does not raise any validity issues—and in any event, that "as applied" protest does not raise any important federal question that merits issuance of the writ. *See* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.").[7]

B. The Ninth Circuit's Holding Is Consistent With Other Circuits' Precedent.

Once the Ninth Circuit's decision is read for what it says—rather than for what Peabody says it says—Peabody's attempt to create a circuit conflict fails. The Ninth Circuit was right: where, as here, "a Native

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[7] Peabody's alternative claim "for an order compelling arbitration pursuant to the Federal Arbitration Act, 9 U.S.C. § 4" also fails to support federal-question subject-matter jurisdiction. [ER 31 (Compl. ¶ 81)] *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983) ("The Arbitration Act . . . does not create any independent federal-question jurisdiction under *28 U.S.C. § 1331* or otherwise.") (citation omitted). *See also Stock West*, 873 F.2d at 1225 (reliance on the Federal Arbitration Act "is insufficient to confer federal question jurisdiction" over case brought to compel Indian tribe to arbitrate a contractual dispute).

sovereign has not tried to assert authority over a non-Native party, and where the validity of a federally-regulated contract is not at issue, courts have not found a substantial federal question to be present." [Pet. App. 12a] *See, e.g., Niagara Mohawk Power Corp. v. Tonawanda Band of Seneca Indians,* 94 F.3d 747, 752-53 (2d Cir. 1996) (holding that where the validity of a contract was not disputed, the fact of federal review and approval did not convert a simple breach of contract claim into a federal cause of action); *Tamiami Partners, Ltd. v. Miccosukee Tribe of Indians,* 999 F.2d 503, 507 (11th Cir. 1993) (finding no federal question jurisdiction where plaintiff only presented facts establishing a breach of contract claim); *Littell v. Nakai,* 344 F.2d 486, 487-88 (9th Cir. 1965) (holding that there is no federal question where the main dispute is centered on a contract and its construction, rather than the validity of the federal approval of the contract).

The cases cited by Peabody (at 19-22) are not to the contrary. In each of those cases, federal jurisdiction existed because the complaints raised issues regarding: (i) the scope of tribal jurisdiction over the commercial activities of non-Indians; or (ii) the validity of federally regulated contracts. *See, e.g.:*

- *Comstock Oil & Gas Inc. v. Ala. & Coushatta Indian Tribes,* 261 F.3d 567, 569, 572-75 (5th Cir. 2001) (federal question jurisdiction found to determine whether tribes had exceeded their governmental powers by filing suit in a newly constituted tribal court alleging that oil and gas leases governed by the IMLA were (i) invalid for lack of Secretarial approval; and (ii) void for deficiencies in production and because Comstock had misappropriated natural gas from tribal lands);[8]

[8] *See also Chuska Energy Co. v. Mobil Exploration & Producing N. Am., Inc.,* 854 F.2d 727 (5th Cir. 1988) (finding no

- *Superior Oil Co. v. United States*, 798 F.2d 1324, 1328-29 (10th Cir. 1986) (federal question jurisdiction found to determine whether the tribe exceeded its jurisdiction in withholding approval of certain assignments of oil and gas leases under the IMLA);
- *Tenneco Oil Co. v. Sac & Fox Tribe of Indians*, 725 F.2d 572, 575-76 (10th Cir. 1984) (federal question jurisdiction found to determine whether tribe exceeded its jurisdiction in attempting to impose certain licensing, organizational and taxation requirements on an oil and gas lease that was governed by the IMLA);
- *Gaming World Int'l, Ltd. v. White Earth Band of Chippewa Indians*, 317 F.3d 840, 847-49 (8th Cir. 2003) (federal question jurisdiction found over declaratory judgment action to determine scope of tribal court jurisdiction to consider validity of contract governed by the Indian Gaming Regulatory Act);
- *Bruce H. Lien Co. v. Three Affiliated Tribes*, 93 F.3d 1412, 1421 (8th Cir. 1996) (federal question jurisdiction found over action to determine scope of tribal court jurisdiction to consider validity of contract governed by the Indian Gaming Regulatory Act);
- *Rainbow Resources, Inc. v. Calf Looking*, 521 F. Supp. 682 (D. Mont. 1981) (federal question jurisdiction found over action for declaratory and injunctive relief regarding the jurisdiction of a tribal court over an oil and gas lease issued under 25 U.S.C. § 396).

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subject matter jurisdiction because it was only the anticipated defense, not the complaint itself, that challenged the legality of the oil and gas assignment at issue).

CONCLUSION

This case presents no novel question and creates no conflict with any decision of this Court or among the circuits. Accordingly, the petition for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit should be denied.

December 10, 2004. Respectfully submitted,

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